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TAGS: [KCRM](#) [PHUM](#) [KWMN](#) [KJUS](#) [SMIG](#) [ELAB](#) [PREL](#) [PGOV](#) [GM](#)  
SUBJECT: GERMAN PARLIAMENT TO CONSIDER LEGISLATION  
CRIMINALIZING CLIENTS OF TIP VICTIMS

REF: A. MUNICH 113  
[1](#)B. 05 BERLIN 4080  
[1](#)C. GOODRICH/CONWAY EMAIL 06/01/06

Classified By: EMIN Robert F. Cekuta for reasons 1.4  
(b) and (d).

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Summary  
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[1](#)1. (SBU) A German Government opinion welcomed the objectives of a Bundesrat bill to criminalize clients who knowingly or recklessly patronize victims of trafficking in persons (TIP).

As a Justice Ministry official pointed out, the Merkel Government's November 2005 Coalition Agreement supports implementing measures to compel clients of TIP victims to come forward. Some NGOs, however, argue the initiative will actually discourage clients of TIP victims from notifying police. The Bundesrat bill also calls for the repeal of 2002 amendments to the German penal code that decriminalized the promotion of prostitution. Proponents of the Bundesrat bill argue the 2002 measures stripped police of the authority to conduct snap inspection of brothels. Others argue police continue to use other legal grounds to monitor, inspect, and raid brothels. The Government opinion said it would wait for the results of a study commissioned by the Family Ministry to analyze the effects of the penal code amendments and other provisions of 2002 legislation that regularized prostitution.

The measure will now be referred to the Bundestag for further consideration, most likely after the release of the Family Ministry study, expected in late 2006. End Summary.

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Government Supports Criminalizing Clients of TIP Victims  
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[1](#)2. (C) The German government issued an opinion April 26 supporting the objectives of a bill passed by the Bundesrat -- the upper house of the German parliament -- to criminalize clients who knowingly or recklessly patronize trafficking victims. The legislation was tabled by the Bavarian delegation and had long been a priority for the Bavarian Justice Ministry (ref A). Federal Justice Ministry Criminal Law Desk Officer Perdita Kroeger told us the Merkel Government, since its inception, had supported measures to compel clients of TIP victims to come forward. She noted the November 2005 Coalition Agreement called for legislation criminalizing clients who knowingly or recklessly purchase the sexual services of TIP victims. As reported ref B, the Ministry of Justice has been considering measures to require clients of a prostitute to notify the authorities if they had reason to believe the prostitute was being forced to engage in the activity in late 2005.

13. (SBU) According to Christian Democratic Union/Christian Social Union of Bavaria (CDU/CSU) parliamentary staffer Joerg Boehl, a new penal code provision punishing clients of TIP victims is not strictly necessary, but would give prosecutors an additional tool to fight TIP. He noted clients of TIP victims could already be prosecuted for rape, kidnapping, aiding or abetting trafficking or abduction, or under German laws requiring individuals to assist others in need. Some NGOs have opposed criminalizing clients of victims. According to Nivedita Prasad of Ban Ying, a Berlin-based NGO that provides counseling and assistance to TIP victims, criminalizing clients of TIP victims would reduce the number of clients willing to come forward to help TIP victims.

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Parliament to Consider Merits of 2002 Penal Code Amendments  
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14. (C) The Bundesrat bill also calls for repealing amendments to the German penal code that decriminalized the promotion of prostitution. The amendments were included in 2002 legislation regulating prostitution (see para 6). According to Boehl, the CDU/CSU supports restoring penal code provisions criminalizing the promotion of prostitution, but opposes any sort of ban on the purchase of commercial sex. He said the purpose of the bill was to strengthen police authority to conduct snap inspections of brothels without advance notice. Boehl noted some police officials held the 2002 amendments decriminalizing the promotion of prostitution effectively stripped police of that authority. Others, including Federal Family Ministry and Federal Interior Ministry officials, argue police post-2002 have used other grounds, such as noise violations, reports of theft or violence, or suspicions of under-age prostitutes, illegal migrants, or TIP victims present in the brothel to monitor,

search, and raid brothels. Federal Interior Ministry Desk Officer for Organized Crime and TIP Gernot Achsnich said local health and trade authorities in most German cities, as well as immigration officials, also monitor brothels and share concerns about illegal activity with local police and criminal investigators. He said many police investigations are launched on the basis of tips from the general public.

15. (U) The Government opinion noted the Federal Family Ministry had commissioned a study to evaluate the effects of the 2002 legislation and said the government would use the results of that study to guide future action, including possible additional steps to regulate brothels. The Family Ministry expects to release the study later this year. Green party Member of Parliament Irmgard Schewe-Gerik, in a press release issued June 2, argued it was premature to consider repealing the 2002 amendments to the penal code and urged the Family Ministry to expedite the release of its study.

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What Did the 2002 Legislation Do?  
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16. (C) Before 2002, Section 180(a) of the German penal code criminalized the actions of persons who (informal Embassy translation) "professionally maintain or manage an operation in which persons engage in prostitution and in which: (1) those persons are held in personal or financial dependency; or (2) the exercise of prostitution is promoted by measures which go beyond merely furnishing a dwelling, a place to say, or a residence and the additional services normally associated therewith." The 2002 legislation eliminated the second subsection so that Section 180(a), as amended, criminalizes only the exploitation of prostitutes, specifically the actions of those who "professionally maintain or manage an operation in which persons engage in prostitution and in which those persons are held in personal or financial dependency." As Justice Ministry rep Kroeger explained, before 2002 it was not only unlawful to exploit a prostitute, but also to promote prostitution by operating a brothel or even ensuring hygienic working conditions.

¶7. (U) The 2002 law also narrowed the criminal offense of pimping -- Section 181(a) -- to "impairing the personal or economic independence of another person by facilitating that person's engagement in prostitution." The 2002 legislation also gave prostitutes the legal right to enforce contracts for sexual services and access to health insurance, social security benefits, and, in rare cases, unemployment benefits. (NOTE: The 2002 legislation did not legalize prostitution in Germany. Prostitution has been legal throughout Germany since the nineteenth century. END NOTE)

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Family Ministry Previews Study Evaluating 2002 Law  
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¶8. (C) According to Federal Family Ministry Deputy Director General for Women's Issues Renate Augstein, independent researchers interviewed NGO representatives, law enforcement officials, prosecutors, local authorities, and prostitutes. She said the study's preliminary conclusions indicated the 2002 legislation had not had a significant effect on regulation of prostitution in Germany or improved working conditions for prostitutes. She said the legislation should be viewed as only the first step in a long-term effort to "bring prostitution out of the shadows." She explained the law was a political compromise and, therefore, only a "half-step."

¶9. (C) Because the legislation did not explicitly label prostitution as moral or immoral, Augstein said, it had done little to address the ambiguity with which some local government authorities view prostitution. She asserted most cities had not changed the ways they regulate prostitution and therefore prostitution remains largely underground. In a small number of cities, such as Frankfurt and Dortmund, Augstein said, police and local authorities formed "round-table" working groups with NGOs and even brothel owners to discuss improving working conditions and combating TIP. In cities that have instituted these round-tables, she said, conditions for prostitutes have improved. Brothel owners have agreed to provide better working conditions, and prostitutes and NGOs feel more comfortable working with police. Augstein said the study would probably recommend that Germany change its trade laws to require brothels to obtain special licenses that will require demonstrated and sustained compliance with not only TIP laws but also regulations on working conditions and benefits.

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Next Steps  
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¶10. (SBU) According to parliamentary staffer Sabine Sprywald, the draft bill will now move to the Bundestag -- parliament's lower house -- for consideration. After a first reading, the bill will be referred to the body's Judiciary Committee. Sprywald did not expect the Committee would turn its attention to the measure until after the Family Ministry study is released later this year.

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